

**SUPREME COURT OF CALIFORNIA
ORAL ARGUMENT CALENDAR
SAN FRANCISCO SESSION
JANUARY 6, 7, and 8, 2009**

FIRST AMENDED

The following cases are placed upon the calendar of the Supreme Court for hearing at its courtroom in the Earl Warren Building, 350 McAllister Street, Fourth Floor, San Francisco, California, on January 6, 7, and 8, 2009.

TUESDAY, JANUARY 6, 2009—9:00 A.M.

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|-----|---------|--|
| (1) | S155742 | Sheehan et al. v. The San Francisco 49ers, LTD |
| (2) | S156986 | Mileikowsky v. West Hills Hospital & Medical Center et al. |
| (3) | S023421 | People v. Bunyard (Jerry) [Automatic Appeal] |

WEDNESDAY, JANUARY 7, 2009—9:00 A.M.

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| (4) | S155589 | Morongo Band of Mission Indians v. State Water Resources Control Board |
| (5) | S159524 | In re Nolan W. on Habeas Corpus |
| (6) | S143929 | Silverbrand v. County of Los Angeles et al. (<i>To be called and continued</i>) |

1:30 P.M.

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| (7) | S153183 | People v. Kim (Hyung) |
| (8) | S151561 | People v. Villa (Avelino) |
| (9) | S149344 | Prince v. Pacific Gas & Electric Co. (<i>Chin and Corrigan, JJ., not participating; McGuiness and McIntyre, JJ., assigned justices pro tempore</i>) |

THURSDAY, JANUARY 8, 2009—9:00 A.M.

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| (10) | S143723 | Guardianship of Ann S. |
| (11) | S142028 | In re Charlotte D. |
| (12) | S149988 | State of California v. Underwriters at Lloyd's London et al. (<i>Chin, J., not participating; Mosk, J., assigned justice pro tempore</i>) |

1:30 P.M.

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| (13) | S156537 | People v. Wagner (David Eric) |
| (14) | S156775 | People v. Ramirez (Jessie Jose) |
| (15) | S157601 | People v. Chun (Sarun) |

GEORGE
Chief Justice

If exhibits are to be transmitted to this court, counsel must apply to the court for permission.
(See Cal. Rules of Court, rule 8.224(c).)

**SUPREME COURT OF CALIFORNIA
ORAL ARGUMENT CALENDAR
SAN FRANCISCO SESSION
JANUARY 6, 7, and 8, 2009**

FIRST AMENDED

The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

TUESDAY, JANUARY 6, 2009—9:00 A.M.

(1) *Sheehan et al. v. The San Francisco 49ers, LTD, S155742*

#07-417 Sheehan et al. v. San Francisco 49ers, LTD, S155742. (A114945; 153 Cal.App.4th 369; Superior Court of San Francisco County; CGC05447679.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) Did ticket holders of the San Francisco 49ers football team impliedly consent to the team's policy of conditioning admission to its stadium on submission to a patdown search when they purchased season tickets with knowledge of that policy? (2) If so, did that consent extinguish any reasonable expectation of privacy with respect to the searches as matter of law, such that the trial court was not required to consider the justifications in support of the policy or balance plaintiffs' privacy interests against the team's countervailing interests?

(2) *Mileikowsky v. West Hills Hospital & Medical Center et al., S156986*

#07-462 Mileikowsky v. West Hills Hospital & Medical Center et al., S156986. (B186238; 154 Cal.App.4th 752; Superior Court of Los Angeles County; BS091943.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents the following issue: Does the presiding hearing officer in a medical peer review proceeding have the authority to terminate the hearing as a sanction for a party's failure to cooperate in discovery, or must that decision be made by the hearing committee empowered to decide the case on the merits?

(3) *People v. Bunyard (Jerry), S023421 [Automatic Appeal]*

This matter is an automatic appeal from a judgment of death.

WEDNESDAY, JANUARY 7, 2009—9:00 A.M.

(4) *Morongo Band of Mission Indians v. State Water Resources Control Board.*, S155589

#07-427 Morongo Band of Mission Indians v. State Water Resources Control Board., S155589. (C052177; 153 Cal.App.4th 202; Superior Court of Sacramento County; 04CS00535.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case presents the following issue: May a staff attorney for an administrative agency serve as a prosecutor in one matter while simultaneously serving as an advisor to the agency as decision maker in an unrelated matter, without violating the due process rights of parties that appear before the agency?

(5) *In re Nolan W. on Habeas Corpus*, S159524

#08-29 In re Nolan W. on Habeas Corpus, S159524. (D050408; 156 Cal.App.4th 1499; Superior Court of San Diego County; NJ13442.) Petition for review after the Court of Appeal annulled a judgment of contempt in a dependency proceeding. The court limited review to the following issues: (1) Did the juvenile court have the authority to order the minor's mother to participate in a substance abuse program as part of her reunification plan? (2) Did Welfare and Institutions Code section 213 authorize the juvenile court to hold the minor's mother in contempt and incarcerate her for failing to comply with that component of the reunification plan?

(6) *Silverbrand v. County of Los Angeles et al.*, S143929 (To be called and continued)

#06-90 Silverbrand v. County of Los Angeles et al., S143929. (B176239; unpublished opinion; Superior Court of Los Angeles County; MC014605.) Petition for review after the Court of Appeal dismissed the appeal in a civil action. This case presents the following issue: Does the "prison delivery" rule apply to the filing of a notice of appeal in a civil case, and thus make timely a notice of appeal deposited in the prison legal mail system before the expiration of the jurisdictional deadline but not received by the trial court until after that deadline has passed?

1:30 P.M.

(7) *People v. Kim (Hyung)*, S153183

#07-317 People v. Kim (Hyung), S153183. (H029324; 150 Cal.App.4th 1158; Superior Court of Monterey County; SM970463.) Petition for review after the Court of Appeal reversed orders in a criminal proceeding. This case includes the following issues: (1) Is a person who petitions for a writ of habeas corpus "restrained of his liberty" within the meaning of Penal Code section 1473,

subdivision (a), when he is in the custody of federal immigration officials solely because of a California conviction on which the sentence has fully expired? (2) Is the writ of error *coram nobis* available to challenge a California conviction on which the sentence has fully expired if the conviction is presently the basis of federal immigration proceedings and the petitioner alleges that trial counsel failed to properly advise him of the immigration consequences of the conviction and that he did not in fact know what those consequences would be? (3) Did the trial court have the power to grant petitioner's nonstatutory motion to vacate judgment for ineffective assistance of counsel in failing to properly advise him of the immigration consequences of the conviction?

(8) *People v. Villa (Avelino)*, S151561

#07-212 *People v. Villa (Avelino)*, S151561. (A111891; 148 Cal.App.4th 473; Superior Court of Alameda County; 97879.) Petition for review after the Court of Appeal affirmed the denial of a petition for writ of error *coram nobis*. This case presents the following issue: Is a habeas corpus petitioner "restrained of his liberty" within the meaning of Penal Code section 1473, subdivision (a), when he is in the custody of federal immigration officials solely because of a California conviction on which the sentence has fully expired?

(9) *Prince v. Pacific Gas & Electric Co.*, S149344 (*Chin and Corrigan, JJ., not participating; McGuinness and McIntyre, JJ., assigned justices pro tempore*)

#07-88 *Prince v. Pacific Gas & Electric Co.*, S149344. (H028957; 145 Cal.App.4th 289; Superior Court of Santa Clara County; 1-02-CV-810390.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issue: Does the principle that there can be no indemnity without liability apply to claims for implied contractual indemnity as it does to claims for comparative equitable indemnity?

THURSDAY, JANUARY 8, 2009—9:00 A.M.

(10) *Guardianship of Ann S.*, S143723

#06-77 *Guardianship of Ann S.*, S143723. (C049915; 138 Cal.App.4th 644; Superior Court of Yolo County; PG01254.) Petition for review after the Court of Appeal affirmed an order terminating parental rights. This case presents the following issue: Is Probate Code section 1516.5 constitutional if it permits the termination of parental rights without a present finding of parental unfitness? A similar issue is before the court in *In re Charlotte D.*, S142028 (#06-59).

(11) *In re Charlotte D., S142028*

#06-59 *In re Charlotte D., S142028.* (B183788; 137 Cal.App.4th 1222; Superior Court of Ventura County; A14917.) Petition for review after the Court of Appeal reversed an order terminating parental rights. This case presents the following issue: Is Probate Code section 1516.5, which permits the termination of parental rights without an express finding of parental unfitness, unconstitutional either on its face or as applied to an unwed father who has demonstrated a full commitment to his parental responsibilities?

(12) *State of California v. Underwriters at Lloyd's London et al., S149988 (Chin, J., not participating; Mosk, J., assigned justice pro temore)*

#07-148 *State of California v. Underwriters at Lloyd's London et al., S149988.* (E037627; 146 Cal.App.4th 851; Superior Court of Riverside County; CIV239784, RIC381555.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issues: (1) Does application of the pollution exclusion clause of the comprehensive general liability excess insurance policies at issue in this case turn on when waste material was discharged *from* the Stringfellow Acid Pits waste disposal site or when the waste was initially deposited *into* the site? (2) If pollution is caused by both uncovered intentional actions and covered accidents, does the insured have the burden at trial to prove that all of the damages it seeks to recover were caused by a covered event, or is there a duty to indemnify when two concurrent causes are responsible for an injury even if one of the causes is an uncovered act?

1:30 P.M.

(13) *People v. Wagner (David Eric), S156537*

#07-447 *People v. Wagner (David Eric), S156537.* (C052049; 154 Cal.App.4th 81; Superior Court of Yolo County; CRF036456.) Petition for review after the Court of Appeal voided a probation revocation proceeding and vacated the sentence imposed. This case includes the following issues: (1) Does Penal Code section 1381, which provides that a state prisoner may demand a trial or sentencing within 90 days of a written demand when “any other indictment, information, complaint, or any criminal proceeding wherein the defendant remains to be sentenced” is currently pending, apply to a pending probation revocation proceeding, or is Penal Code section 1203.2a, which provides for sentencing in absentia for probationers incarcerated on an unrelated offense, the exclusive means for an incarcerated probationer to receive concurrent sentencing? (2) Did the Court of Appeal properly calculate the end of defendant’s probationary term for the purpose of calculating the last day upon

which the prosecution may refile a probation revocation proceeding dismissed pursuant to Penal Code section 1381?

(14) *People v. Ramirez (Jessie Jose)*, S156775

#07-463 *People v. Ramirez (Jessie Jose)*, S156775. (F050212; 154 Cal.App.4th 1290; Superior Court of Madera County; MCR021366.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Is grossly negligent discharge of a firearm (Pen. Code, § 246.3) a lesser included offense of malicious and willful discharge of a firearm at an inhabited dwelling (Pen. Code, § 246)?

(15) *People v. Chun (Sarun)*, S157601

#07-469 *People v. Chun (Sarun)*, S157601. (C049069; 155 Cal.App.4th 170; Superior Court of San Joaquin County; SF090168C.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. This case presents the following issue: Does the offense of discharging a firearm at an occupied vehicle in violation of Penal Code section 246 merge with a resulting homicide under *People v. Ireland* (1969) 70 Cal.2d 522, if there is no admissible evidence of an independent and collateral criminal purpose other than to commit an assault?